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ABSTRACT

A study examined the current United States Supreme Court's treatment of the legal concept of freedom of expression by exploring its decisions and opinions on a quantitative basis. The individual votes and the opinions or legal rationales of the justices were recorded for the 43 First Amendment cases decided by the court between the 1981 appointment of Justice O'Connor and the end of the 1985-86 term. The votes of the justices were recorded in terms of their agreement with each of the other justices, their agreement with the decisions of the courts, and their agreement with outcomes favorable to petitioners claiming violation of their First Amendment rights. Results indicated that the court decided 18 of the 43 cases unanimously, while splitting by one or two votes in 19 cases. Eighteen cases were decided in favor of the litigants claiming violation of First Amendment rights. The court was found to be somewhat more unfavorable than favorable and somewhat more divided than unanimous. Justices Brennan and Marshall were most favorable to First Amendment claimants, and Justices Burger, White, O'Connor and Rehnquist were least favorable. Respective analyses show some differences between how the liberals and conservatives on the Supreme Court vote and how they reason in First Amendment cases. Brennan and Marshall appear to stand resolutely alone in voting, but when they write opinions, White appears to provide at least some leadership in linking some of the conservatives with the liberals. (HTH)

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Voting and Opinion Agreement at the Supreme Court in First Amendment Cases

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Voting and Opinion Agreement at the Supreme Court
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The freedom to communicate in the United States often creates controversy that finds its way into the legal system, which is expected to make a decision in favor of one side of a dispute and to pronounce the constitutional or precedental principle that controls the situation. Most of these principles are established by the Supreme Court of the United States, an institution of nine justices who vote on the outcome of important cases and articulate reasons, in the form of published opinions, for their votes.

The purpose of this paper is systematically to describe the current court's treatment of the legal concept of freedom of expression by exploring its decisions and opinions on a quantitative basis.[1] Whether the court is generally sympathetic to claims that freedom of expression has been illegally limited and what rationales the court announces to support its decisions seem to be important topics for students of communication in the American setting.

Legal scholars appear to be highly divided about not only whether what they call the "Burger Court," named after its chief justice, Warren E. Burger, has looked favorably or unfavorably toward First Amendment claims but also in describing the values the court brings to resolving the claims. One group (e.g., Abraham, 1976; Choper, 1979; Dionisopoulos, 1973; Funston, 1977; Hodder-Williams, 1980) has argued that the

court has been favorable by citing its many decisions that seem to advance freedoms of speech, press, assembly and petition. This trend, the group contends, is a consequence of a generally healthy attitude toward civil rights and liberties tempered by respect for the role of the judiciary in the political system.

A second group (e.g., Friedman, 1978; Sanford, 1979; Thomas, 1976; Tribe, 1978; Wasby, 1976; Yarbrough, 1975) suggests that the court, especially in comparison with its predecessor court under Chief Justice Earl Warren, has been unfavorable toward arguments attempting to promote freedom of expression. These students of the court attribute its backsliding in the First Amendment area to the court's membership, which is controlled by conservative ideologists.

A third group (e.g., Emerson, 1980; Frank, 1980; Friedelbaum, 1977; Howard, 1980; Rohde & Spaeth, 1976; Woodward & Armstrong, 1979) has posited that the Burger Court has been rather directionless in its adjudication of First Amendment cases, sometimes voting favorably, sometimes voting unfavorably, due in part to the wide-ranging ideologies and independence of its members and in part to the circumstances of the First Amendment claims.

All three groups would tend to agree that the present court is more conservative in philosophy as well as in its willingness to attack social problems than had been the Warren Court, which is remembered for its liberalism and activism

in the political system. Various comparisons of the work of the respective court periods, however, have found about as many similarities as differences.[2]

Obtaining satisfactory descriptions and explanations for the Burger Court's voting and reasoning in the First Amendment area can be a difficult process, especially when the ideological positions of the scholarship and the adversarial nature of jurisprudence generally are taken into consideration. Some methodologically sophisticated and theoretically rigorous work has been applied to court data toward these ends (e.g., Heck, 1980; LeVar, 1977; Spaeth & Altfeld, 1985; Ulmer, 1965) but to date most of it tends to establish, at least in the First Amendment area, only broad findings, e.g., that the court has been generally unfavorable (Schwartz, 1981; Stempel, 1982) or confused (Arledge & Heck, 1982) about freedom of speech and press or that, at best, the notion of freedom of expression is ideologically complex (Schwartz, 1983).

Popular commentary about the current Supreme Court concerns its ripeness for personnel change since a majority of its justices seem to be past retirement age. Chief Justice Burger and associate justices William Brennan, Thurgood Marshall, Harry Blackmun and Lewis Powell are in their 70s. In addition, Justice William Rehnquist has been in poor health. Many commentators have speculated about the opportunity for President Reagan to reconstitute the court to the extent President Nixon did with his appointments of

Burger, Blackmun, Powell and Rehnquist in the late 1960s and early 1970s. Yet the stability of the court membership since 1971 has been unparalleled in its history and the tendency of the justices to persevere should be noted. In short, the duration of the court under its present membership and leadership is at least unpredictable. Even if the court membership is soon radically alt red, description of the present court period would seem useful.

Method

This study encompasses all First Amendment cases, except establishment of church and freedom of religion cases, decided by the court between the appointment of Sandra Day O'Connor in 1981 and the end of the 1985-86 term. Forty-one cases[4] were located by using the "First Amendment," "Speech and Press Freedom," "Speech Freedom" and "Press Freedom" index headings in United States Supreme Court Reports, Lawyers' Edition, and in the cover case digests of its Advance paperbacks.[5]

The members of the present court were nominated by two Democratic and four Republican presidents. The senior-most member is Brennan, nominated by Eisenhower and confirmed by the Senate in 1956. The other members, in order of seniority, are: Byron White (1962, Kennedy); Marshall (1967, Johnson); Burger (1969, Nixon); Blackmun (1970, Nixon); Powell (1971, Nixon); Rehnquist (1971, Nixon); John Paul Stevens (1975, Ford); and O'Connor (1981, Reagan).

The procedure of the court allows the justices to express

their attitudes toward legal issues at several stages. The justices vote on whether to accept a case for review in the first place. They may discuss whether to review the case at regularly scheduled private conferences for those purposes. If a case is accepted for review, the justices read lower court materials and briefs filed by the opposing parties before holding a public hearing at which the justices may comment on the case and question the attorneys presenting arguments.

In the private conferences, the justices also discuss the cases and take votes on the outcomes. The chief justice, if he is in the majority, assigns the task of writing the opinion for the court to one of the members of the majority. If the chief justice is a dissenter, the senior-most justice in the majority assigns the court's opinion to an author. All of the justices also have options to write and/or join opinions concurring and/or dissenting in part or in whole with the opinion of the court.

The two most revealing indications of the justices' attitudes toward the issues before the court are their votes, with which they rule in favor of one party and against the other to establish some precedent, and their opinions, with which they express their legal rationales for their votes. These two variables will be the focus for this study. How do the justices vote in First Amendment cases dealing with freedom of expression? Which justices seem most favorable

and least favorable toward that referent? The outcome relationships between the justices should be revealed by their comparative voting habits.

Why the justices vote the way they do may be studied through a traditional or quantitative content analysis of their published opinions. Rather than replicate these studies, however, this study will analyze the options for opinion-writing and opinion-joining for the justices. Another way to conceptualize the meaning of the opinions is in terms of ideas of individual justices; that is, Justice A represents Philosophy A, Justice B represents Philosophy B, etc. Which philosophies or justices seem to prevail? Who seems to lead the court? What are the principal philosophical relationships between the justices? In each of the two analyses, some of the dynamics of influence between the justices should be revealed. At the same time, differences between how justices vote and why they vote the way they do should be better understood.

The votes of the justices in freedom of expression cases were recorded in terms of their agreement with each of the other justices, their agreement with the decisions of the court, and their agreement with outcomes favorable to petitioners claiming their First Amendment rights had been violated. The opinions of the justices in the same cases were recorded in terms of the type of opinions written or joined (majority, concurring or dissenting) and the authors of the opinions written or joined.

The voting data were analyzed by G indexes of agreement (Guilford & Fruchter, 1973, p. 311) between each justice and each of the other justices and by McQuitty's linkage analysis (McQuitty, 1957) applied to the indexes. The opinion-joining data were analyzed by Spearman rho correlation coefficients (Blalock, 1960, p. 317) comparing each justice with every other justice in their choices of justices to join. These correlations also were subjected to McQuitty's linkage analysis.

Results

Tradition at the court encourages its members to strive for unanimity, but several observers have noted the divisiveness of the Burger Court. In First Amendment cases since 1981, the court decided 18 of 43 cases unanimously, while splitting by one or two votes in 19 cases. On the whole, however, the justices voted 300-77 in the cases, averaging about a 7-2 division.

Of the 43 cases, 18 were decided in favor of the litigants claiming their First Amendment rights were violated. Only three justices voted favorably more than they voted unfavorably: Brennan (73.8%), Marshall (69%) and Blackmun (57.1%). Least favorable was Rehnquist (25.6%). The other justices ranged between 34.9% and 50% in favorableness. On the average, the justices voted favorably 47.3% of the time.

The range increased sharply when only nonunanimous cases were considered.[6] Cases that caused at least one justice to

vote differently accentuated Brennan's favorable disposition (95.8% favorable voting) as well as Rehnquist's unfavorable disposition (8.3%). A stronger favorable block, Brennan, Marshall, Blackmun and Stevens, also emerged; but the unfavorable block also become more unfavorable as it favorable positions ranged from Rehnquist's 8.3% to Powell's 40.9%.

[Insert Table 1 about here.]

The linkage analysis of the court's voting behavior in nonunanimous cases revealed two distinct groups on the court. The first group is constituted only by the pair of justices with the strongest index of agreement: Brennan and Marshall at .833. The second group is much more complicated. The strongest agreement pair is Rehnquist and O'Connor (.667), but the Burger-Rehnquist relationship (.652) also is strong. Powell tends to vote most often with O'Connor. Blackmun and Stevens vote most frequently with Burger. White does not have a strong positive voting relationship with any of the other justices, but he has weak links with Burger, Rehnquist and Stevens. The only justice in the second group with linkages to four other justices is Burger, but his relationship with Rehnquist is much stronger than with any other justice. Rehnquist is linked to three other justices. Powell and Blackmun seem to be somewhat distant from the group with only one linkage each.

[Insert Table 2, Figure 1 about here.]

The most prolific opinion authors on the Burger Court

during this period were Brennan (21) and White (20), who wrote over a third of the 116 opinions in First Amendment cases. White was the most frequent choice to write majority opinions (9). The task of writing court opinions, however, was spread out fairly evenly among almost all of the other justices with all but Burger, Powell and Blackmun writing between four and six opinions each. Earlier in the history of the court, Burger was noted for assigning himself more than any other justice (Haines, 1977; Schwartz, 1982), but he seems to have delegated this chore in more recent terms.

Powell did not participate in three cases due to a hospital stay, which may explain his fewer assignments. Blackmun, however, was inexplicably assigned no First Amendment court opinions to write. In fact, he wrote only five opinions altogether in these cases, the fewest of any of the justices, except Powell, who also wrote five.

[Insert Table 3 about here.]

The justice who seemed most anxious to express his differences from the other views in these cases clearly was Brennan, who wrote 11 dissenting opinions, almost twice as many as anyone else. Other frequent opinion authors were Stevens (17) and Rehnquist (16). The most popular authors were White who attracted justices to join his opinions 55 times, Brennan (47), Rehnquist (43) and O'Connor (35). At the other extreme, Blackmun attracted only four justices to join in his five opinions.

Four of the justices--Powell, O'Connor, Rehnquist and White--averaged between 2.7 and 3 joiners per each of their opinions. The other justices attracted about two or fewer justices per opinion written. When Rehnquist wrote opinions for the court, he seemed to be able to maintain a broader support within the court than any other justice. He averaged 6.8 justices in his majorities, a full justice more than his nearest rival, O'Connor (5.8).

In concurring and dissenting opinions, justices try to distinguish their individual positions from the majority (cf. Rathjen, 1974a) but also may attract other justices to join the opinions. Brennan was the only justice to attract, on the average, more than one other justice to join his or her special opinions, but that was only 1.6 justices. Marshall was the least effective at attracting other justices to his special opinions (.3).

The linkage analysis of the opinion-joining correlation coefficients also produced two types, but the composition of the types is different than the types for the voting agreement indexes. Burger, Rehnquist, Blackmun and Stevens remained in the second typology. Burger and Rehnquist formed the strongest link (.840), but Burger appears to be in the central position for the group. Somewhat surprisingly, White, O'Connor and Powell moved into the first typology with Marshall and Brennan. While the liberal pair still have a strong relationship (.800), now Brennan and White have the strongest

dyad in the matrix.

[Insert Table 4, Figure 2 about here.]

White provided the link between the liberals and the more moderate O'Connor, with whom Powell associated himself. The White-Brennan alliance is curious because they had a -.417 G index for voting, the highest association White had with any other justice. White was tied as the second most unfavorable voter while Brennan was the most favorable voter. It should also be remembered that these two were the most productive authors of opinions, which suggests that they had forceful, albeit apparently not coincidental, views on First Amendment issues. White also had an insignificant index of voting agreement (.167) with O'Connor who, in terms of opinions at least, tends highly to correlate with White.

The opinion-joining correlations, of course, are not based on how often justices join each other but rather on how they compare with each of the other justices in terms of the attractiveness of their opinions. Nevertheless, the measurement strongly indicates a level of kinship about First Amendment philosophy that stands in sharp contrast to voting agreement between White and Brennan.

Discussion

The purpose of this study was to look at the relationships between the justices on the current Burger Court in First Amendment cases in terms of how they vote and write and

join opinions. The court was found to be somewhat more unfavorable than favorable and somewhat more divided than unanimous. Brennan and Marshall were seen as the justices who were most favorable to First Amendment claimants, and Burger, White, O'Connor and Rehnquist as the least favorable. Two typologies were discovered with Brennan and Marshall in one group and all other justices in the other group.

Brennan and White were the most prolific opinion authors, and given their extremely different positions on the scale of favorableness toward freedom of expression, would presumably be spokespersons for their opposing voting blocks. Linkage analysis of their choices of opinion authors to join, however, established them as the strongest pair of justices of any of dyads on the court. White's affiliation with Brennan brought two other conservative justices--O'Connor and Powell--into the Brennan-Marshall typology.

Two sets of explanations can be offered for the unusual differences between the two McQuitty's analyses; one speaks to the methodology employed in the study. The other is more substantive in nature.

First, the correlations from the opinion-joining data were based on comparative ranks of justices' opinions to join. White and Brennan each wrote opinions in almost half of the cases, clearly indicating a prference for their own First Amendment philosophies. What was left over may have been only a few opinion-joining opportunities and, as a

result, perhaps not too much should be made of the coincidence of their choices of other justices. Further, the voting analysis was based on nonunanimous cases while the opinion-joining analysis was based on both unanimous and nonunanimous cases. Since White wrote four unanimous opinions for the court, Brennan obviously would be counted as following White's lead, while this phenomenon did not occur in the measurement of voting by the justices.

On the other hand, more than coincidence has to be at work for them to choose other justices to such an extent. In addition, White chose Brennan second-most often to join and Brennan chose White third-most often to join. Finally, the opinion-joining data are based on choices made regardless of the case outcome while voting is based on favorableness and unfavorableness.

The substantive explanation for the unusual configuration in the first McQuitty type of the opinion analysis is as mixed and speculative as the methodological explanation. Possibly the key association between White and Brennan does not say as much about them, Powell, O'Connor and Marshall as it does about the justices in the second group, especially Burger and Rehnquist, who clearly have established themselves as the conservative wing on the court. Despite the fact that a clear majority of the court leans toward conservatism, Burger and Rehnquist's extremism may be more offensive to the centrists than the extremism of the liberal Brennan and Marshall.

Burger's role as chief justice often involves assigning moderates to write opinions for the court when he is in the majority, and he naturally joins his own choices. This does makes him the most popular justice in terms of the high number of positive and significant correlations he has with other justices: Rehnquist, Stevens, Blackmun, White (.467) and O'Connor (.500). When he dissents, however, his choice of opinions to join is usually that written by Rehnquist or whomever Rehnquist may join.

Blackmun clearly failed to show strong correlation with any of the justices, except Burger, because the only direction in which his data points is toward the majority and its author. Stevens actually had more in common with more members of the first typology than with the second; nevertheless his highest correlation was with Burger probably for the same reason as Blackmun.

White has been seen as a "swing vote" on the court (e.g., McLeon, 1979) although the data in this study suggest that such a role is more a matter of his independence than his moderation. As Burger's favorite choice to write court opinions, White is asked to write many conciliatory statements to avoid loss of any members of already fragile majorities (Rohde, 1972; Rathjen, 1974b). His affiliation with the Warren Court, however, probably gives him some credibility with Marshall and Brennan, also Warren Court holdovers. This shared appreciation for precedent from the 1960s, which

Brennan now best exemplifies, may prompt White and Brennan strongly to agree when White is not voting with or writing for his more recent philosophical compatriots--the Nixon conservatives.

Whatever the reasons, the respective analyses show some differences between how the liberals and conservatives on the Supreme Court vote and how they reason in First Amendment cases. When it comes to voting, Brennan and Marshall generally stand resolutely alone. When they write opinions, however, perhaps at least White provides some leadership in linking some of the conservatives with the liberals.

Endnotes

[1]Approaching law with quantitative or behavioral models, while still somewhat upsetting to elements in the bar, bench and law schools, nevertheless has become mainstream in many law, political science and even communication journals. For general theoretical and methodological dimensions of this research, see Gibson (1983), Gillmor & Dennis (1981) and Tate (1983).

[2]The differences may be fewer substantively as well as in the degree of cohesiveness. The Burger Court has been accused of being in "disarray" in First Amendment cases becauses of the divisiveness of its voting behavior. While the Warren Court may have been more unanimous in these cases, its members nevertheless issued no clear theory of the First Amendment because of the high number of opinions they wrote (Birkby, 1968).

[3]Political scientists who most frequently adopt empirical approaches to the study of the Supreme Court and its work favor isolation of periods during which court membership is undisturbed. This keeps the issues fairly current and controls for interaction on the collegial court (Rohde & Spaeth, 1976).

[4]See appendix for list of cases. Two cases will actually be counted as four cases (for a total sample of 43 cases in subsequent references) because the court voted differently

on two distinct First Amendment questions in each of the cases: Regan v. Time, Inc., 82 L.Ed.2d 487 (1984); Zauderer v. Office of Disciplinary Counsel, 85 L.Ed.2d 652 (1985).

[5]United States Supreme Court Reports, Lawyers' Edition will be cited throughout the paper because the official reporter is not as current.

[6]Only nonunanimous cases were used to compute the G indexes of agreement. Using all cases tended artificially to inflate the degrees of agreement between justices. Nonunanimous cases, furthermore, show disagreement when disagreement actually exists in the final outcome.

APPENDIX: LIST OF CASES

Anderson v. Celebreezze, 75 L.Ed.2d 547 (1983)

Board of Education v. Pico, 73 L.Ed.2d 435 (1982)

Bolger v. Youngs Drug Product Corp., 77 L.Ed.2d 469 (1983)

Bose Corp. v. Consumer Union, Inc., 80 L.Ed.2d 502 (1984)

Bread Political Action Committee v. FEC, 71 L.Ed.2d 432 (1985)

Brockett v. Spokane Arcades, Inc., 86 L.Ed.2d 394 (1985)

Brown v. Hartlage, 71 L.Ed.2d 732 (1982)

Brown v. Socialist Workers '74 Campaign Committee, 74 L.Ed.2d 250 (1982)

Bush v. Lucas, 76 L.Ed.2d 648 (1983)

Calder v. Jones, 79 L.Ed.2d 804 (1984)

Citizens Against Rent Control v. Berkeley, 70 L.Ed.2d 492 (1981)

Clark v. Community for Creative Non-Violence, 82 L.Ed.2d 221 (1984)

Clements v. Fashing, 73 L.Ed.2d 508 (1982)

Connick v. Myers, 75 L.Ed.2d 708 (1983)

Cooper v. Mitchell Brothers, 70 L.Ed.2d 262 (1981)

Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 86 L.Ed.2d 593 (1985)

FCC v. League of Women Voters of California, 82 L.Ed.2d 278 (1984)

FEC v. National Conservative PAC, 84 L.Ed.2d 455 (1985)

FEC v. National Right to Work Committee, 74 L.Ed.2d 364 (1982)

Globe Newspaper Co. v. Superior Court, 73 L.Ed.2d 248 (1982)

Harper & Row, Inc. v. Nation Enterprises, Inc., 85 L.Ed.2d 588 (1985)

In the Matter of R.M.J., 71 L.Ed.2d 64 (1982)

Keeton v. Hustler Magazine, Inc., 79 L.Ed.2d 790 (1984)

Los Angeles City Council v. Taxpayers for Vincent, 80 L.Ed.2d 772 (1984)

Lowe v. SEC, 86 L.Ed.2d 130 (1985)

Maryland v. Macon, 86 L.Ed.2d 370 (1985)

McDonald v. Smith, 86 L.Ed.2d 384 (1985)

Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, 75 L.Ed.2d 295 (1983)

Minnesota State Board of Community Colleges v. Knight, 79 L.Ed.2d 299 (1984)

NAACP v. Claiborne Hardware Co., 73 L.Ed.2d 1215 (1982)

New York v. Ferber, 73 L.Ed.2d 1113 (1982)

Perry Education Association v. Perry Local Educators' Association, 74 L.Ed.2d 794 (1983)

Press Enterprise Co. v. Superior Court, 78 L.Ed.2d 629 (1984)

Regan v. Time, Inc., 82 L.Ed.2d 487 (1984)

Roberts v. U.S. Jaycees, 82 L.Ed.2d 462 (1984)

Seattle Times Co. v. Rhinehart, 82 L.Ed.2d 17 (1984)

United Brotherhood of Carpenters v. Scott, 77 L.Ed.2d 1049 (1983)

United States v. Grace, 75 L.Ed.2d 736 (1983)

United Steelworkers v. Sadlowski, 72 L.Ed.2d 707 (1982)

Village of Hoffman Estates v. Flipside, Hoffman Estates, 71 L.Ed.2d 362 (1982)

Zauderer v. Office of Disciplinary Counsel, 85 L.Ed.2d 652 (1985)

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TABLE 1

Favorable and Unfavorable Voting in First Amendment Cases

Justice	All cases		Nonunanimous cases	
	Fav.-Unfav.	%Fav.	Fav.-Unfav.	%Fav.
1. Brennan	31-11	73.8	23-1	95.8
2. Marshall	29-13	69.0	21-3	87.5
3. Blackmun	24-18	57.1	15-9	62.5
4. Stevens	21-21	50.0	12-11	52.2
5. Powell	17-22	43.6	9-13	40.9
6. Burger	16-26	38.1	7-17	38.1
7. O'Connor	15-28	34.9	6-18	25.0
8. White	15-28	34.9	6-18	25.0
9. Rehnquist	11-32	25.6	2-22	8.3
Total	179-199	47.3		

TABLE 2

G Index Correlation Matrix for Voting in Nonunanimous First Amendment Cases

	Burger	Rehnquist	O'Connor	Blackmun	Powell	Stevens	White	Brennan	Marshall
Burger		.652	.417	.417	.364	.333	.250	-.500	-.542
Rehnquist	.652		.667	-.083	.273	.250	.250	-.917	-.750
O'Connor	.417	.667		.167	.455	.083	.167	-.583	-.417
Blackmun	.417	-.083	.167		-.091	.167	.083	.167	.167
Powell	.364	.273	.455	-.091		.181	-.091	-.182	-.091
Stevens	.333	.250	.083	.167	.181		.250	-.083	-.167
White	.250	.250	.167	.083	-.091	.250		-.417	-.333
Brennan	-.500	-.500	-.583	.167	-.182	-.083	-.417		.833
Marshall	-.542	-.542	-.417	.167	-.091	-.167	-.333	.833	

All correlations are positive unless otherwise indicated.

Underscored correlations represent relations between "first cousins" (McQuitty, 1957).

TABLE 3

Number and types of Opinions Written and Average Number of Joiners in All Cases

Justice	Types of Opinions Written				Average Number of Joiners		
	Majority	Concurring	Dissenting	Total	All	Majority	Special
Brennan	5	5	11	21	2.2	4.4	1.56
White	9	5	6	20	2.7	5.0	.91
Stevens	6	6	5	17	1.8	4.8	.18
Rehnquist	5	6	5	16	2.7	6.8	.82
O'Connor	5	5	2	12	2.9	5.8	.85
Marshall	4	5	2	11	1.8	4.5	.29
Burger	3	4	2	9	2.1	5.0	.67
Blackmun	0	5	1	6	0.8	0.0	.80
Powell	3	0	2	5	3.0	4.7	.50
Total				116			

TABLE 4

Spearman Rho Correlation Matrix for Opinion Agreement in All First Amendment Cases

	Burger	Rehnquist	O'Connor	Blackmun	Powell	Stevens	White	Brennan	Marshall
Burger		.840	.500	.470	.100	.767	.467	.117	-.167
Rehnquist	.840		.733	-.350	.500	.267	.533	.060	-.170
O'Connor	.500	.733		.150	.534	.725	.783	.267	.092
Blackmun	.470	-.350	.150		-.150	.167	.283	.267	.350
Powell	.100	.500	.534	-.150		.350	.450	.117	.134
Stevens	.767	.267	.725	.167	.350		.700	.633	.283
White	.467	.533	.783	.283	.450	.700		.858	.484
Brennan	.117	.060	.267	.267	.117	.633	.858		.800
Marshall	-.167	-.170	.092	.350	.134	.283	.484	.800	

All correlations are positive unless otherwise indicated.

Underscored correlations represent relations between "first cousins" (McQuitty, 1957).

FIGURE 1

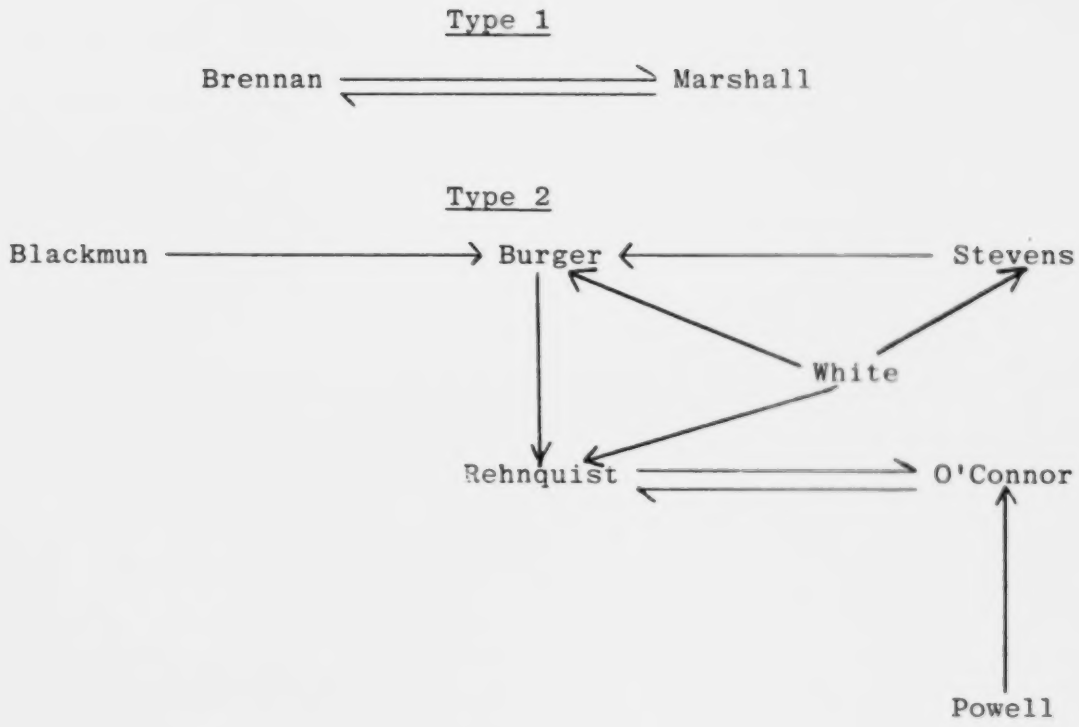
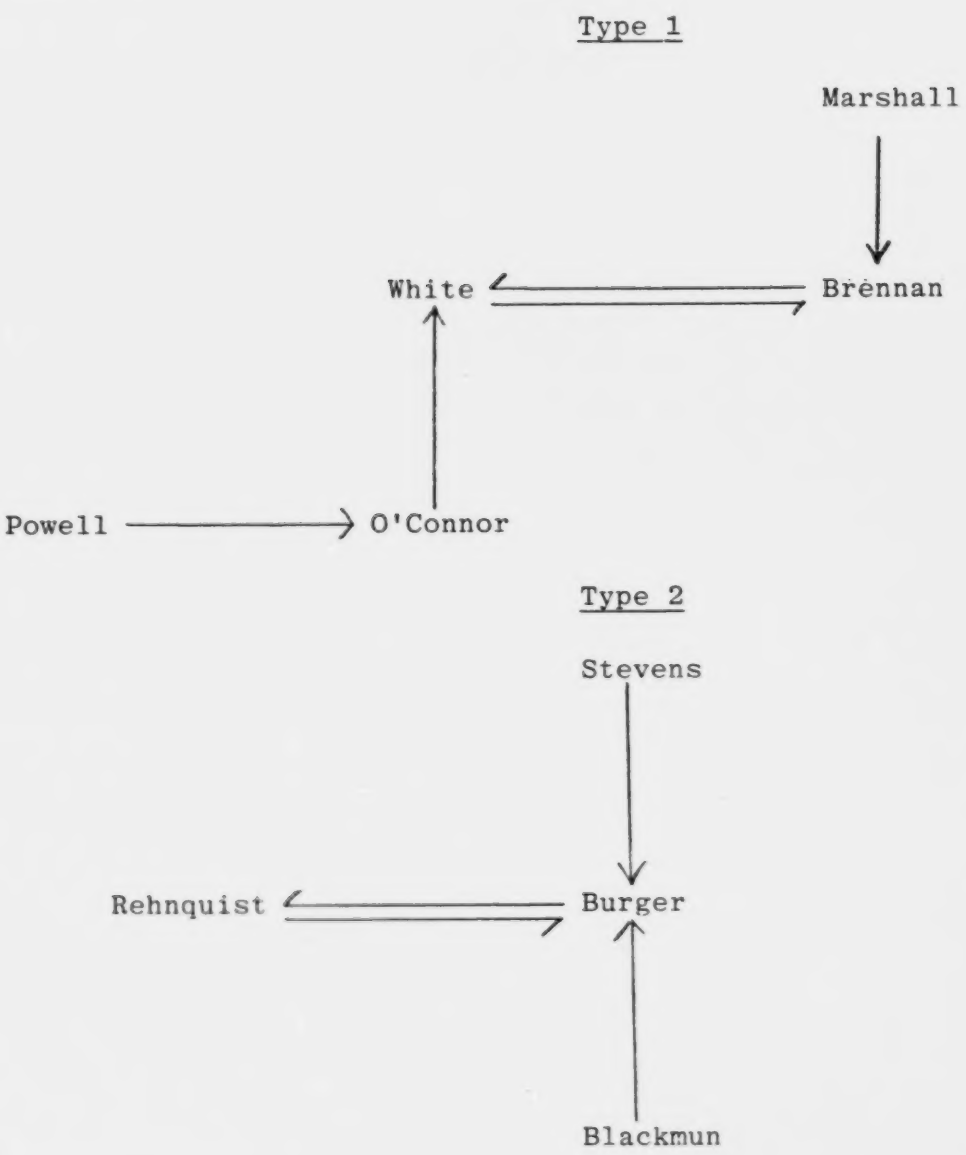

Type 1
Brennan
Marshall
Type 2
Blackmun
Burger
Stevens
White
Rehnquist
O'Connor
Powell

FIGURE 2


Type 1
Marshall
White
Brennan
Powell
O'Connor
Type 2
Stevens
Rehnquist
Burger
Blackmun